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No. 81-9

In The

Supreme Court of the United States

October Term, 1981

STATE OF WASHINGTON, et al.,
Appellants,

v.

SEATTLE SCHOOL DISTRICT NO. 1, et al.,
Appellees.

ON APPEAL FROM THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

BRIEF OF AMICUS CURIAE
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BRIEF OF THE WASHINGTON EDUCATION ASSOCIATION AS AMICUS CURIAE

INTEREST OF AMICUS CURIAE

All parties have consented to the filing of this brief.

The Washington Education Association (WEA) is an organization of over 38,800 professional educators in the State of Washington. The WEA's purpose is to

advance the interests of the profession of teaching and to promote the cause of education in the State of Washington.

The WEA is the statewide parent organization of 243 local education associations, which are the designated local collective bargaining representatives for educational employees under Washington's Education Employment Relations Act, RCW 41.59 et seq. The WEA provides bargaining support, research services and legal assistance to these affiliates.

The WEA is also affiliated with the National Education Association (NEA), a nationwide organization of educators. The NEA has monitored desegregation efforts across the country and provided its state and local affiliates with information and advice concerning the impact of desegregation efforts on teachers.

For over ten years, the WEA has cooperated in the desegregation efforts of

school districts in Washington. It has been involved in inservice training programs to prepare teachers to participate in desegregation programs. WEA-assisted affiliates have bargained over the effects of desegregation plans on the assignment and transfer of teachers, on the curricula to be offered in special programs set up by such plans and on the training or experience necessary for teachers involved in desegregation efforts.

Local WEA affiliates represent teachers in all three of the school districts which have initiated the present litigation. As the recognized bargaining agent for certified staff in the Plaintiff-Appellee Seattle School District, the Seattle Teachers Association (STA) bargains for 2,059 classroom teachers in the district which was the target of Initiative 350. The Tacoma Association of Classroom Teachers (TACT) is the exclusive bargaining

representative of 1,550 teachers in Plaintiff-Appellee Tacoma School District. The Pasco Association of Educators (PAE) bargains on behalf of 257 teachers in the Pasco School District.

Because the implementation of Initiative 350 would restrict the desegregation programs of Washington school districts, the working environment of teachers represented by WEA and its affiliates would necessarily be affected. Reversal of the decisions of the courts below would create particularly significant changes for teachers in the Seattle, Tacoma, and Pasco schools, where desegregation programs evolving from a decade of discussion among school board members, administrators, parents and teachers would be jeopardized by implementation of Initiative 350.

SCOPE OF BRIEF

The Washington Education Association adopts the Statement of Facts presented by Appellees Seattle School District, et al. Since the WEA also supports the legal arguments made by appellees, the purpose of this brief is not to duplicate the appellee's arguments but to discuss the impact of Initiative 350 on education. Should this Court decide to reverse the decisions of the courts below and allow the implementation of Initiative 350, such a decision would severely hinder efforts of Washington school districts to increase educational opportunities by desegregating their schools.

While this brief discusses the discriminatory impact of Initiative 350 on minority students, the WEA recognizes that this is not a case which necessarily hinges directly on discriminatory impact.

Initiative 350 is unconstitutional because it creates an explicit race classification and was intended to do so.

With the exception of desegregation, Initiative 350 allows mandatory busing of a student past the student's nearest or next nearest school for most, if not all, purposes for which busing is currently used (473 F. Supp. at 1010, Finding of Fact 8.3) (hereinafter cited as F.F. __). The mandatory reassignment of students in a desegregation program is thus singled out for special treatment. This creates a classification treating education matters relating to race differently from other educational matters and burdening the minority population in seeking adequate educational opportunities for their children. Since there is no compelling state interest supporting such a race classification, the

statute violates the Fourteenth Amendment in the same manner as did the housing classification in Hunter v. Erickson, 393 U.S. 385 (1969). See also, Lee v. Nyquist, 318 F. Supp. 710 (W.D.N.Y. 1970), aff'd, 402 U.S. 935 (1971).

The record amply supports the finding of the district court that this racial classification did not come about simply by coincidence. Initiative 350 was designed, marketed, and adopted in large part to frustrate desegregation efforts. The discriminatory purpose behind Initiative 350 also compels the conclusion that Initiative 350 violates the Fourteenth Amendment. See, Arlington Heights v. Metropolitan Housing Development Corporation, 429 U.S. 252 (1977).

While the impact of Initiative 350 on educational programs is not the focus of the legal analysis, the question of the initiative's impact on students does affect consideration of the legal issues of this case. Discriminatory impact is one factor to be considered in evaluating evidence of discriminatory intent under the standards of Arlington Heights v. Metropolitan Housing Development Corporation, 429 U.S. 252 (1977). The educational impact of a desegregation program with mandatory busing is also important in determining whether the anti-busing policy of Initiative 350 serves a compelling state interest which will justify the constitutionality of a race classification under the strict scrutiny given to such discrimination. McLaughlin v. Florida, 379 U.S. 184, 192-196 (1964).

Finally, as an organization of concerned educators, the WEA believes that an examination of the education policies which will be frustrated by the implementation of Initiative 350 underscores the vital importance of this case. By depriving local school boards of control over student reassignment in desegregation programs, Initiative 350 severely limits school districts' ability to plan effective educational programs which address the problems of race discrimination and the impact of racial isolation.

SUMMARY OF ARGUMENT

There are many sound reasons for a Washington school district to find that a desegregation program will benefit its students. The primary reason, of course, is the elimination of the effects of intentional segregation. Even without a court finding of past discrimination, a school district has a duty to undertake a desegregation program where the district has reason to believe that intentional discrimination has occurred and has not yet been remedied. Dayton Board of Education v. Brinkman, 443 U.S. 526, 637 (1979). Discouraging school districts from undertaking voluntary desegregation programs prolongs and intensifies the disadvantages minority students suffer under segregation.

A school district may also institute a desegregation program to help eliminate racial isolation and to prepare students to live in today's pluralistic society. The

A diverse student body is a significant component of an educational program which attempts to instill in students the values of a democratic society, to teach students how to appreciate and respond to people of different races and cultures, and to provide a learning environment which stimulates the exchange of ideas.

The gains in educational achievement made by minority students are important benefits of desegregation programs. Reliable research indicates that desegregation programs have a positive impact on achievement and IQ test scores of minority students.

Both this Court and desegregation researchers have concluded that mandatory assignment plans may be necessary to a plan which is effective in reducing racial isolation and securing to its students the benefits described above. Because a voluntary desegregation program incurs

substantial expenses in advertising and operating special programs, a mandatory plan may also be a more efficient allocation of school resources than a voluntary program. For these reasons, the curtailment of a school district's control over student assignment severely limits desegregation planning and the benefits which flow from desegregation programs.

In contrast to the strong policy underpinnings of desegregation programs, the educational policy basis of Initiative 350's anti-busing policy is not substantial. Busing per se has been shown not to have any negative consequences for students. Desegregation programs in general have not had any harmful effects on white student achievement. Furthermore, the frequently cited reasons for a "neighborhood school policy", such as safety and parent cooperation, are speculative and are

outweighed by the benefits of a desegregation program which may not be effective without busing.

The language of Initiative 350 indicates that not even its drafters believed that the educational advantages of "neighborhood schools" are substantial. The broad exceptions of the Initiative would allow school districts to use busing for virtually all purposes except desegregation. There is, however, no principled basis in a neighborhood schools policy *per se* for distinguishing between busing for desegregation and busing for other educational purposes.

ARGUMENT

I. A State Law Which Frustrates Desegregation Programs Interferes With a School District's Duty To Provide a Sound Education To All Students and Places Special Burdens On the Efforts of School Districts and the Minority Population To Provide Educational Opportunities for Minority Children

Washington school districts have been given a broad mission in planning educational programs for their students.[1] The responsibility of the Washington school system includes much more than teaching reading and writing.

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[1] The court of appeals below was correct in its assessment that in Washington the education of children in elementary and secondary grades is primarily a matter of local control. (633 F.2d at 1346). "The determination of educational goals, programs and curricula is a matter within the broad discretion of the school board." Peters v. South Kitsap School District, 8 Wn. App. 809, 817, 509 P.2d 67, 73 (1973). See e.g., R.C.W. 28A.58.103, R.C.W. 28A.59.180. Although this discretion is not unlimited, the limitations set by state rules operate as accreditation standards rather than as the directives of a centrally planned educational program. The Washington Supreme Court has found that the state has a duty to provide an ample education for its resident children. Yet

The Washington Supreme Court has recognized that the state's children have a right to be provided "broad educational opportunities needed in the contemporary setting to equip our children for their role as citizens and as potential competitors in today's market as well as in the market place of ideas." Seattle School District No. 1 v. State of Washington, 90 Wn.2d 476, 517, 585 P.2d 71, 94 (1978). The court found that the education system is not an institution which can remain isolated from problems which citizens face outside the classroom but is an enterprise with wide-ranging and crucial goals. The court stated:

(footnote 1 continued)

it has also recognized that much of the task of carrying out this duty has been delegated to the local school districts. Seattle School District No. 1 v. State of Washington, 90 Wn.2d 476, 535, 585 P.2d 71, 103 (1978).

> Education plays a critical role in a free society. It must prepare our children to participate intelligently and effectively in our open political system to insure that system's survival. . . . It must prepare them to exercise their First Amendment freedoms both as sources and receivers of information; and it must prepare them to be able to inquire, to study, to evaluate and to gain maturity and understanding.

90 Wn.2d at 517-518, 585 P.2d at 94.

In meeting the task of providing a full education to Washington school children, a local school district may find that a desegregation plan serves several important purposes. Although some of these purposes are significant in assuring to all children their right to an ample education, we show below that minority children are especially benefited. Thus, as Initiative 350 dismantles or prevents effective desegregation plans, it would have an especially severe impact on the educational opportunities of minority students.

A. Requiring a court order before a school district may implement the full range of segregation remedies places a heavy and unnecessary burden on school districts and the minority populations affected

The most fundamental reason for implementing a desegregation program is, of course, the need to eliminate the effects of race discrimination. Washington schools are under a clear duty to provide equal educational opportunities for all students.

The Washington Constitution guarantees the state's resident children an education "without distinction or preference on account of race, color, caste, or sex." Wn. Const. art. 9, § 1. The Fourteenth Amendment to the United States Constitution also guards this right and places an affirmative duty on school districts to provide a remedy when the right has been violated. As this Court ruled in Green v. County School Board of New Kent County,

391 U.S. 430, 437-438 (1968), school boards which have operated intentionally segregated school systems are "clearly charged with the affirmative duty to take whatever steps might be necessary to convert to a unitary system in which racial discrimination would be eliminated root and branch." See also, Dayton Board of Education v. Brinkman, 443 U.S. 526, 537 (1979).

Initiative 350 will frustrate the performance of this duty in a school district which finds evidence of past intentional segregation but which has not been adjudicated to be in violation of its constitutional duty. The language of the Initiative allows mandatory busing for desegregation purposes only when a court of competent jurisdiction chooses to order it.[2] R.C.W. 28A.26.060.

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[2] Despite the clear language of the initiative, the State claims that an unpublished Washington Attorney General's opinion removes Initiative 350 as an obstacle to a

Thus under the Initiative's terms, a school district cannot voluntarily adopt a busing program when, in its view, such a program is needed to eliminate segregation "root and branch". It must await litigation and a court order. A school district may find itself in the dilemma of believing intentional discrimination to have occurred, but having nonetheless to be a defendant in desegregation litigation, which is

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(footnote 2 concluded)

school district which, before court adjudication, finds itself under a constitutional duty to desegregate. (Brief for Appellants, pp. 37-8.) The Attorney General's opinion, however, finds no support in the language of Initiative 350. Moreover, the Attorney General acknowledges that his interpretation does not remove the risk of litigation from such a school district. Rather, a district which in good faith adopts a busing plan to avoid the Scylla of Fourteenth Amendment litigation is likely to be faced with the Charybdis of an Initiative 350 lawsuit.

frequently costly, complicated, devisive, and protracted.[3]

The limited funds available to schools would then be spent on litigation rather than on needed educational programs. In addition, such litigation and the resulting diversion of scarce funds could needlessly polarize the school community.

A policy requiring litigation in order to sanction full remedial measures places a disproportionate and unjustified burden on minorities to marshal the resources needed to initiate and prosecure each litigation. The lack of such resources will preclude the remedy of many valid race discrimination claims.[4]

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[3] "It is not unusual for the process to span a decade and encompass 25 reported judicial opinions costing in excess of a million dollars." U. S. Comm'n on Civil Rights, With All Deliberate Speed: 1954-19??, 38 (1981).

[4] See H.R. Rep. No. 94-1558, 94th Cong., 2d Session 2-3 (1976).

Even with a successful lawsuit, the length of litigation prolongs the denial of educational opportunities to the victims of discrimination. This Court has long recognized the detrimental effects segregated schools have upon black children. Brown v. Board of Education, 349 U.S. 294 (1955). (See Section I.(C), infra, pp. 26-34.) Requiring court adjudication before the imposition of a remedy which a school board is willing to adopt voluntarily unnecessarily burdens minority children in segregated schools.

B. The reduction of racial isolation in school systems is an important strategy for an educational proram designed to teach students in a pluralistic society

This Court has recognized the broad discretion given to school districts in designing educational programs which will meet the needs of their students. In Swann

v. Charlotte-Mecklenburg Board of Education, 402 U.S. 1, 16 (1971), this Court stated:

> School authorities are traditionally charged with broad power to formulate and implement educational policy and might well conclude, for example, that in order to prepare students to live in a pluralistic society, each school should have a prescribed ration of Negro to white students reflecting the proportion for the district as a whole. To do this as an educational policy is within the broad discretionary powers of school authorities. . . .

In the present case, not only have local school districts made a similar policy determination (Exhibit 9), but this policy has been endorsed by the Washington State Board of Education. The State Board has concluded that "[T]he presence in a school of children from different racial and socioeconomic backgrounds is an important element in the preparation of young people for active participation in pluralistic democracy." (Ex. 117.)

A policy to prevent racial isolation serves several important teaching purposes. It is part of the way that students learn that there is "no one model American",[5] a value at the heart of a democratic society. Regular contact with persons from other backgrounds may also give students experience which enable them to develop skills and attitudes needed to appreciate or respond positively to persons from other cultures or racial groups.[6] In a world in which American soldiers are sent to

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[5] Position statement of the American Association of Colleges for Teacher Education, cited in Multicultural Education Through Competency-Based Teacher Education 21 (Hunter, ed. 1974).

[6] Recent national studies suggest that desegregation is having a positive impact not only students, but upon the community at large. Since 1954, public support for school integration has increased dramatically. The increase has been greater in the South, where there has been the greatest amount of desegregation, than in the North and West. Rossell, "School Desegregation and Community Social Change," 42 Law and Contemporary Problems 170-72 (1978). Moreover, studies show that adults with

Southeast Asia and American business representatives travel to the Middle East to bargain for necessary oil, such skills and attitudes may be crucial to the success of an individual or to the survival of this country.

A separate but related purpose of diversity in the student population is the provision of a learning environment which promotes the exchange of ideas among students. This Court has endorsed the value of training which comes about "through wide exposure to that robust exchange of ideas which discovers truth 'out of a multitude of tongues, [rather] than through any kind of authoritative selection.'" Keyishian v. Board of Regents, 385 U.S. 589, 603 (1967), cited

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(footnote 6 concluded)

children attending public schools are more favorable toward desegregation than adults without school age children. Id. at 177.

in University of California Regents v. Bakke, 438 U.S. 265, 312 (1978) (Powell, J.). Such training is an important part of preparing students to participate as effective citizens in this country's political system.[7]

The reduction of racial and cultural isolation of students is not the only strategy needed to provide the educational benefits described above. All of these educational goals, however, would be far more difficult to reach in a school system in which racial isolation of students is substantial.

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[7] Although this Court's statement referred to the college environment, the Court has also recognized that elementary and secondary students are able to appreciate and exercise their First Amendment freedoms. Tinker v. Des Moines Independent Community School District, 393 U.S. 503 (1969). Moreover, the Washington Supreme Court has ruled that elementary and secondary schools must prepare students to "participate intelligently and effectively in our open political system." Seattle School District No. 1 v. State of Washington, 90 Wn.2d 476, 517, 585 P.2d 71, 94 (1978).

C. The educational achievement of minority students is increased by desegregation

Many of the desegregation programs instituted since the 1954 decision in Brown v. Board of Education, 347 U.S. 493 (1954) have been built on the belief that desegregation will remedy the deleterious impact of segregation on the education of minority children. An increase in educational opportunities from desegregation has been obvious in some respects, since desegregation has often improved the school facilities available to blacks in segregated schools.[8]

Proponents of desegregation have also argued, however, that by removing the psychological disadvantages of segregated schools, desegregation increases the

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[8] See U.S. Comm'n on Civil Rights, Fulfilling the Letter and Spirit of the Law 120-121 (1976).

opportunity of minority children to learn. While the multi-faceted nature of education makes this hypothesis difficult to measure, school achievement tests have been used in many districts to track some of the effects of desegregation and have shown that desegregation does have a positive impact for minority children on the achievement of skills measured by the test scores.

Recent reviews of desegregation studies have demonstrated that desegregation programs are associated with an increase in scores by minority students on both achievement tests[9] and IQ

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[9] Crain and Mahard, "Some Policy Implications of the Desegregation-Minority Achievement Literature", 5 Assessments of Current Knowledge About the Effectiveness of School Desegregation Strategies 175 (1981). (hereinafter "Desegregation-Minority Achievement Literature"); Crain and Mahard, "Desegregation and Black Achievement: A Review of the Research", 42 Law and Contemporary Problems 17 (1978) (hereinafter "Desegregation and Black

tests.[10] Studies of students in various types of segregated and racially mixed schools, including integrated schools which were not the result of desegregation programs, have also shown that minority students in predominantly white schools scored higher than minority students in predominantly minority schools.[11]

In an attempt to minimize the impact of Initiative 350 on minority students, the

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(footnote 9 concluded)

Achievement"). M. Weinberg, Minority Students: A Research Appraisal, 112, 327 (1975); Hawley, "The New Mythology of School Desegregation", 42 Law and Contemporary Problems 218-19 (1978).

[10] Crain and Mahard, "Desegretation-Minority Achievement Literature", at 175. Desegregation does not appear to have any effect on the achievement scores of white students. "Desegregation and Black Achievement," supra n.9, at 18.

[11] Crain and Mahard, "Desegregation-Minority Achievement Literature," supra n.9 at 173; Hawley, "The New Mythology of School Desegregation", supra n.9, at 217-218.

dissenting opinion in the court of appeals below alluded to controversy concerning such research. 633 F.2d 1338, 1354. Vague and selective citation of criticism of the desegregation studies, however, misrepresents the findings of the research and of the controversy, which has often focused on research methodology rather than results of the studies.[12]

In a 1981 review of minority achievement studies, two Rand Corporation researchers evaluated ninety-three desegregation studies. Crain and Mahard, "Desegregation-Minority Achievement Literature", supra. Crain and Mahard not only surveyed the conclusions of the studies but also reanalyzed the data base for this research. Their analysis confirmed the positive effects of desegregation in minority achievement and demonstrated that

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[12] See N. St. John, School Desegregation Outcomes for Children 36 (1975).

those research projects which were methodologically strongest showed a much clearer increase in black achievement scores after desegregation than did the less reliable studies. Id. at 183.[13]

Moreover, the desegregation studies are not only providing confirmation of the positive effects of desegregation on minority children, the studies are providing educators with information to design more effective desegregation programs. Desegregation research has identified in recent years some characteristics of a desegregation program which increase the probability of achieving success in desegregation goals such as student achievement or reduction of racial isolation. See W. Hawley, et al., Assessment of Current Strategies About the Effectiveness of School Desegregation Strategies (1981).

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[13] See also, Crain and Mahard, "Desegregation and Black Achievement", supra n.9, at 28-29.

For example, the studies indicate that "the lower the grade of first desegregation, the higher the achievement effect." Crain and Mahard, "Desegregation-Minority Achievement Literature", supra n.9 at 181.[14] Crain and Mahard found that all studies of programs in which desegregation began in kindergarten significantly enhanced minority student achievement. Id.

In addition, the studies indicate that minority achievement is "directly related to percentage of whites in the school - the more whites in the school, the higher the minority achievement." Crain and Mahard, "Desegregation-Minority Achievement Literature", supra n.9 at 195. When, however, the percentage of white students reaches an optimal point, minority achievement appears to decrease. Id. This finding suggests to

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[14] See also, Crain and Mahard, "Desegregation and Black Achievement", supra n.9, at 34.

some researchers that there needs to be a critical mass of minority students in a school to gain the full advantages of desegregation's impact on the achievement of minority students. Id.

Such findings raise significant policy issues for the planning of a desegregation program.[15] They suggest that voluntary

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[15] These conclusions also raise the question of why desegregation has increased achievement scores in the programs studied. Possible theories include the effect of black students transferring to schools with better facilities, the increased attention given to curricula development and inservice teacher training in a newly desegregated program, and higher teacher expectations of students in a racially mixed classroom than in an all-black classroom. See, Crain and Mahard, "Desegregation and Black Achievement", supra n.9, at 49; Crain and Mahard, "Desegregation-Minority Achievement Literature," supra n.9, at 174.

plans which leave some minorities in predominantly minority schools while encouraging a few minority children to integrate overwhelmingly white schools may not be as beneficial in some school districts as desegregation plans which significantly reduce racial isolation. These findings also suggest that voluntary transfer programs may not reach some of the younger children at a time when the benefits of desegregation are greatest.

Such are the questions which need to be weighed in the balance with other factors which influence desegregation planning in any particular community. The challenge is complex and Herculean. The record in this case shows that Seattle, Tacoma, and Pasco labored long and successfully to meet that challenge. Seattle, for example, conducted numerous meetings with citizenry, teachers, and students to ensure community input (Joint Appendix 127-129)

(hereinafter J.A. __). The process it pursued in formulating and implementing its plan was geared to assimilate the factors which have been shown to lead to a successful desegregation program. This Court must not now sanction the attempted instrusion of Initiative 350 upon the achievement gains possible for minority students through the desegregation process.

II. The Mandatory Reassignment Plans Forbidden By Initiative 350 Can Be Important - and Often Necessary Components - Of Effective School Desegregation Programs

In Swann v. Charlotte - Mecklenburg Board of Education, 402 U.S. 1, 29 (1971), this Court recognized "the importance of bus transportation as a normal and accepted tool of educational policy" in school desegregation cases. Indeed, the Court emphasized that "bus transportation has long been an integral part of all public educational systems, and it is unlikely

that a truly effective remedy [for constitutional violations] could be devised without continued reliance on it." North Carolina State Board of Education v. Swann, 402 U.S. 43, 46 (1971).

Desegregation research also indicates that a mandatory student reassignment policy is necessary in some school districts. A 1979 study found that "voluntary desegregation plans, even those including magnet schools cannot reduce racial isolation more than few percentage points in school districts over 30 percent minority."[16] Rossell, "The Effectiveness of Desegregation Plans in Reducing Racial Isolation, White Flight and Achieving a Positive Community Response," 5 Assessment of Current Knowledge About the Effectiveness of School Desegregation Strategies 4

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[16] The district court in this case found that Seattle School District was 37.3 percent minority at time of trial (473 F. Supp. at 998, FF 1.1).

(1981). Even some districts with a smaller proportion of minorities have not been able to desegregate effectively with voluntary plans. Id.

The Seattle experience demonstrates the validity of these conclusions. Despite voluntary transfer programs initiated in 1963 (473 F. Supp. at 1006, F.F. 6.2, J.A. 120), a mandatory busing plan for middle school students begun in 1972 (473 F. Supp. at 1006, F.F. 6.3, J.A. 120). and a magnet schools program publicized in the 1976-77 school year and implemented in the 1977-78 school year (473 F. Supp. at 1006, F.F. 6.5, J.A. 110, 123-24), the school district had been unable by 1977 to reduce the racial imbalance it believed was unacceptable as a matter of law and policy. The Seattle School Board concluded therefore that a voluntary student transfer plan was unlikely to eliminate racial imbalance in Seattle schools to the extent necessary

to meet the goals of the District (473 F. Supp. at 1006, F.F. 6.8, J.A. 68, 75, 106, 111, 120).

A mandatory student reassignment plan may also be necessary to design a desegregation plan which best allocates school district resources for the overall educational program of the district. The Seattle experience is again illustrative.

In evaluating the merits of a mandatory busing plan, the Seattle School District had to consider whether the money spent in designing, implementing, and advertising programs to attract voluntary transfer students could be better spent in upgrading basic education. The Board also needed to decide whether an inefficient voluntary busing program which travelled through several neighborhoods to pick up students was worth the benefits which a voluntary busing plan produced (J.A. 72, 111).

Furthermore, to the extent that voluntary busing plans in Seattle produced change in the racial composition of the schools, this change was brought about by the voluntary transfer of a disproportionate number of minority students (473 F. Supp. at 1006, F.F. 6.7). The Seattle Board was thus faced with the question of whether a voluntary program was the most equitable manner of desegregation.

These questions are critical to the design of an efficient desegregation plan effective in meeting goals set by the school district. They are also questions which are best answered through the deliberations of the local community and the local school board, the body which is answerable to the local electorate, R.C.W. 28A.57.312, charged with development of the school district budget, R.C.W. 28A.65.415, and responsible for labor negotiations with its staff. R.C.W. 41.59 and 41.56.

Denying school districts the alternative of mandatory student reassignment to schools other than those nearest or next-nearest a student's home cripples a school district's ability to tailor a desegregation program to meet the needs of its students and community. Furthermore, in practice, a prohibition on busing places the burden of desegregation on minority children. Initiative 350 thus hinders, and in many school districts completely prevents, a school board from designing a desegregation program which will meet the purposes of a desegregation plan in an equitable and educationally sound manner.

III. There Are No Substantial Educational Reasons For the Anti-Busing Policy Promulgated By Initiative 350

Proponents of Initiative 350 have contended that it advances the purposes of a "neighborhood school policy", which provides educational benefits independent

of the policy's effect on desegregation programs. Support is lacking, however, for the proposition that Initiative 350 serves substantial educational interests. Furthermore, the policy proposed by Initiative 350 undercuts the articulated benefits of neighborhood schools in general at the same time it mandates a neighborhood school policy for desegregation.

There is virtually no evidence that busing students away from neighborhood schools has a detrimental effect on learning. A federally sponsored 1973 study of desegregation in 555 school districts found "no evidence that busing per se has any negative consequences." Moreover, there was "no evidence that attending one's own neighborhood school has any effects, positive or negative, on a school's achievement levels or social climate", Davis, "Busing" 2 National Opinion Research Center, Southern Schools: An Evaluation of the Effects

of the Emergency School Assistance Program and of School Desegregation 118 (1973).

Furthermore, the studies on desegregation have consistently found that desegregation programs have had no negative effect on the educational achievement of white students, at least insofar as that is measured by achievement test scores. A recent survey of desegregation studies concludes that "virtually every writer on the subject agrees" on this finding.[17] Crain and Mahard, "Desegregation and Black Achievement", supra n.9, at 18 (1978).

The contention that increased busing represents a safety hazard for students is also questionable. Statistics on student transportation show that students walking to school are two to three times more likely to be involved in accidents than

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[17] See also, N. St. John, School Desegregation Outcomes for Children 36 (1975); G. Orfield, Must We Bus? 121-124 (1978).

those traveling by bus. U. S. Comm'n on Civil Rights, With All Deliberate Speed: 1954-19?? 38 (1981); G. Orfield, Must We Bus? 134-135.

Most of the other benefits alleged to flow from an anti-busing policy are very speculative and can rarely be evaluated apart from the circumstances of the specific school district in which busing is used as part of a desegregation program.[18]

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[18] In addition to making the neighborhood schools argument, some busing foes have contended that mandatory student reassignment will lessen the effectiveness of desegregation programs by triggering "white flight". Fears about white flight, however, appear to have been exaggerated. Studies show that, even with white flight, desegregation plans with mandatory assignment do reduce racial isolation. Furthermore, the research has identified a number of factors in a busing program which will decrease white flight. See, Rossell, "The Effectiveness of Desegregation Plan in Reducing Racial Isolation, White Flight and Achieving Positive Community Response," 5 Assessment of Current Knowledge About the Effectiveness of School Desegregation Strategies 1 (1981). Thus, the impact of white flight on a desegregation program varies with the community and is subject to some control by the school board which prepares the desegregation plan.

For example, the argument that a neighborhood school policy will be less costly must be weighed against the high costs of voluntary plans which attempt to achieve similar desegregation goals. The argument that neighborhood school facilitate better home-school communication must be viewed in light of statistics showing that over half the nation's school children currently ride a school bus. U. S. Comm'n on Civil Rights, With All Deliberate Speed: 1954-19?? 37 (1981). Any change in the pattern of home-school communication thus depends on pre-desegregation busing patterns.

The language of the Initiative indicates that not even the drafters of Initiative 350 found the educational benefits of neighborhood schools to be significant except in the context of opposition to a desegregation plan. If, for example, a Washington school district finds that certain schools are "inadequate" because of

"lack of physical facilities", the district may allocate its resources either to upgrade the facilities or to bus the children in nearby attendance zones to other more adequate schools. RCW 28A.26.101. Under Initiative 350, the school district which finds that its educational program is unfit because of segregation does not have the flexibility to consider busing as a possible option for efficient allocation of its resources in remedying the problem. If the benefits flowing from a neighborhood school policy were truly substantial, there would seem to be no principled basis for distinguishing these two situations.

An examination of the alleged educational benefits of Initiative 350's anti-busing policy leads inexorably back to the central legal question of whether the actual purpose of Initiative 350 was invidious discrimination on the basis of

race. With its language providing potentially very broad exclusions regarding schools which are "inadequate" because of "lack of physical facilities" or "overcrowding", the so-called "neighborhood schools" policy of Initiative 350 could be interpreted to justify mandatory student reassignment for almost any purpose but school desegregation.

An evaluation of the eductional effects of the anti-busing policy of Initiative 350, therefore, would not be complete without consideration of the lessons which racially discriminatory laws teach. A state which mandates for its children the right to an education free of race discrimination, but allows school policies which discriminate on the basis of racial concerns or which increase for minorities the difficulties of remedying discrimination is sending out, at best, a

mixed message to its school children. Such a lesson certainly outweighs the speculative benefits of a neighborhood schools policy.

Thus, a review of objections to busing, of the alleged benefits of neighborhood schools, and of the operation of Initiative 350 reveals that the anti-busing policy of this Initiative does not contribute to a strong educational program for Washington schools.

CONCLUSION

For the above reasons, the implementation of Initiative 350 will have the effect of denying educational opportunities to all school children, with disproportionately negative effects on minority students. These considerations support the policy of allowing a local school board the flexibility to design a desegregation program without being restricted by the discriminatory proscriptions of Initiative 350.

In light of the arguments advanced by Appellees and supported by this brief, the judgment of the court of appeals should be affirmed.

Respectfully submitted,

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